



ENVIRONMENTAL PROTECTION AGENCY

[FRL-10890-01-OAR]

California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines; Request for Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted two sets of amendments to its Small Off-Road Engine regulation (SORE Amendments). By letter dated December 20, 2022, CARB asked that EPA authorize these amendments pursuant to section 209(e) of the Clean Air Act (CAA). This notice announces that EPA will hold a public hearing to consider California's authorization request and that EPA is now accepting written comment on the requests.

DATES: *Comments:* Written comments must be received on or before July 28, 2023.

Public Hearing: EPA will hold a public hearing on June 27, 2023. See

SUPPLEMENTARY INFORMATION for further information on the virtual public hearing.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA-HQ-OAR-2023-0151 by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method).

Follow the online instructions for submitting comments.

- Email: a-and-r-docket@epa.gov.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OAR, Docket EPA-HQ-OAR-2023-0151, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The

Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays). Instructions: All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the process for this action, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency; Telephone number: (202) 343–9256; Email address: dickinson.david@epa.gov; or Kayla Steinberg, Office of Transportation and Air Quality, Transportation and Climate Division (TCD), Environmental Protection Agency; Telephone number (202) 564-7658; Email address: steinberg.kayla@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Participation Virtual Public Hearing: The EPA will hold a virtual hearing on June 27, 2023. Those wishing to testify or to monitor the virtual hearing should register at: https://usepa.zoomgov.com/webinar/register/WN_LsXS6oB1SZKar1OFfYlR7Q. Those presenting oral testimony will be limited to a 3-minute time slot. The Agency will not be issuing any subsequent **Federal Register** notices and will instead provide any additional details for the hearing at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-small-road-engine-sore>. The link to join the virtual public hearing is at <https://usepa.zoomgov.com/j/1606756297>. EPA recommends submitting the text of your oral testimony as written comments to the docket. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

A. Public Participation Written Comments: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0151 at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section of this document. Once submitted, comments cannot be edited or withdrawn from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (including such content located on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epadockets>. Documents to which the EPA refers in this action are available online at <https://www.regulations.gov/> in the docket for this action (Docket EPA–HQ– OAR– 2023–0151).

EPA’s Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization *Federal Register* notices. This page will also include updates regarding this authorization proceeding. The page can be accessed at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

I. California’s Small Off-Road Engine Regulation, Prior Authorization, and New Request

CARB first adopted emission standards and associated test procedures for small off-road engines (SORE) in 1990.¹ CARB subsequently amended the SORE regulations a number of times and EPA granted authorizations for CARB to enforce the SORE regulations and subsequent amendments.²

On December 20, 2022, CARB submitted a new authorization request to EPA for its amendments to the SORE regulation adopted in 2016 (2016 SORE Amendments) and in 2021 (2021 SORE Amendments).

CARB notes that its 2016 SORE Amendments include improvements to evaporative emissions certification procedures, revise the compliance testing procedure, update the evaporative emissions certification test fuel to represent commercially available gasoline, and align aspects of the SORE requirements with the corresponding federal requirements, while retaining elements of the evaporative emission standards previously adopted by CARB, which are more stringent than federal requirements. CARB also notes the 2016 Amendments are designed to increase SORE equipment compliance with the diurnal emission standards, will require evaporative emissions certification test fuel to be formulated to reflect motor vehicle fuel currently dispensed at California gasoline stations, will enable SORE manufacturers to obtain both CARB and EPA certification for fuel tanks based on a common set of test results, and will enable CARB to more readily identify and remedy violations of the evaporative emissions standards. The 2016 Amendments do not increase the stringency of

¹ SOREs are defined by CARB as off-road spark-ignition engines rated at or below 19 kilowatts (25.5 horsepower) that are not used to propel a licensed on-road motor vehicle, an off-road motorcycle, an all-terrain vehicle, a marine vessel, a snowmobile, a model airplane, a model car, or a model boat. SOREs are predominantly used in lawn and garden equipment such as lawn mowers, string trimmers, and leaf blowers, as well as in other small off-road equipment such as portable generators, pressure washers, and air compressors. The vast majority of SOREs are fueled by gasoline, but some are powered by compressed natural gas (CNG), propane, liquefied petroleum gas (LPG), or liquefied natural gas (LNG). Small off-road equipment powered by SORE are known as SORE equipment. See CARB Authorization Request, EPA-HQ-OAR-2023-0151 at 3.

² 60 FR 37440 (July 20, 1995); 65 FR 69763 (November 20, 2000); 68 FR 65702 (November 21, 2003); 71 FR 75536 (December 15, 2006); 75 FR 8056 (February 23, 2010); 80 FR 26041 (May 6, 2015); 80 FR 76971 (December 11, 2015).

the preexisting SORE evaporative emission standards, but will ensure that manufacturers will more fully comply with those standards.³

CARB notes that its 2021 SORE Amendments primarily establish exhaust and evaporative emission standards and associated test procedures for 2024 and subsequent model engines and equipment that are significantly more stringent than preexisting exhaust and evaporative emission standards and associated test procedures. The 2021 Amendments establish SORE emission standards in two phases. First, the exhaust emission standards for most 2024 and subsequent model year (MY) SOREs is zero (0.00 grams per kilowatt-hour) for hydrocarbons and oxides of nitrogen. Under the 2021 SORE Amendments, carbon monoxide (CO) emission standards for MY 2024 and later engines are more stringent than the existing emission standards for some displacement categories, but they are not zero. The evaporative emission standards for most 2024 and subsequent MY SOREs is zero (0.00 grams per test). The evaporative emission standards include “hot soak” emissions (representing emissions that occur when placing a hot engine in storage after use on a hot summer day) to better evaluate emissions from real world use of SORE equipment. The above-mentioned emission standards apply for all categories of SORE except pressure washer engines with displacements greater than or equal to 225 cubic centimeters (cc) and portable generator engines. The emission standards for the latter category of engines are more stringent than the preexisting emission standards starting in MY 2024 but are not zero. The second phase of the emissions standards will be implemented beginning in the 2028 MY, when the exhaust and evaporative emission standards for engines used in pressure washer with displacements greater than or equal to 225 cc and portable generators will be aligned with the zero-emission standards for other categories of SOREs.⁴

II. Clean Air Act Nonroad Engine and Vehicle Authorization Criteria

³ CARB Authorization Request at 7-14.

⁴ CARB Authorization Request at 14-20.

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].⁵ On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2)(A) of the CAA, that EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.⁶ EPA revised these regulations in 1997.⁷ As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) “consistency” inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).⁸

⁵ 42 U.S.C. 7543(e)(2)(A).

⁶ 59 FR 36969 (July 20, 1994).

⁷ 62 FR 67733 (December 30, 1997). The applicable regulations are now in 40 CFR part 1074, subpart B, section 1074.105.

⁸ 59 FR 36969 (July 20, 1994).

In order to be consistent with section 209(a), California’s nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California’s nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same “consistency” criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California “standards and accompanying enforcement procedures are not consistent with section 202(a)” of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.⁹

In addition, in considering requests from California to authorize the enforcement of standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator is required to give appropriate consideration to safety factors (including the increased risk of burn or fire) associated with compliance with the California standard.¹⁰

III. EPA’s Request for Comments

We request comment on whether California’s 2016 SORE Amendments and the 2021 SORE Amendments meet the criteria for a full authorization. Specifically, we request comment on: (a) whether CARB’s determination that its standards, in the

⁹ 78 FR 58090, 58092 (September 20, 2013).

¹⁰ 40 CFR 1074.105(c).

aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act. We also request comment on any safety factors EPA should consider regarding the 2016 and 2021 SORE Amendments.

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Director,

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Office of Air and Radiation.

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